APPELLANT PRO SE:

MICHAEL E. WETZEL
Evansville, Indiana

ATTORNEY FOR APPELLEE:

JILL DOGGETT
Hart Bell
Vincennes, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL E. WETZEL,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 82A01-0609-CV-394
	)	
WOLFES AUTO AUCTION,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE VANDERBURG SUPERIOR COURT
The Honorable Alan R. Hamilton, Magistrate
Cause No. 82D06-0607-SC-5261

May 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Michael E. Wetzel appeals the small claims court's judgment for defendant, Wolfe's Auto Auction ("Auto Auction"). Wetzel raises two issues on appeal, which we revise and restate as:

I. Whether the small claims court erred by entering judgment for Auto Auction; and

II. Whether the small claims court judge showed bias when it entered judgment for Auto Auction.

We affirm.

The relevant facts follow.[1] On July 3, 2006, Wetzel's vehicle was towed to Auto Auction by Hamrick's Towing Service. Wetzel's vehicle was towed pursuant to an order by the Evansville Police Department. On July 7, 2006, Wetzel went to Auto Auction to pick up his vehicle. At Wetzel's request, an Auto Auction employee moved Wetzel's vehicle outside Auto Auction's lot. Wetzel claimed that Auto Auction had picked up his vehicle from the side and damaged the rocker panel and driveshaft of his vehicle. Wetzel requested three hundred dollars for the alleged damage. Jeff Wolfe, Auto Auction's owner, denied liability and refused to pay Wetzel any money.

On July 10, 2006, Wetzel filed a notice of claim in small claims court. Following a bench trial, the small claims court entered judgment for Auto Auction. This appeal followed.

---

[1] The facts cited in this opinion are facts from Appellee's Appendix because Wetzel requested no transcript in his Notice of Appeal and included only four (4) documents in his appendix. Wetzel's appendix contained the clerk's docket, a copy of the small claims judgment, and two repair estimates. The repair estimates were clearly produced after the date of the small claims court's order. Therefore, the documents could not be part of the record below. Wetzel's letter motion to file a supplemental appendix is denied.

At the outset, we note that Wetzel represented himself pro se in this appeal. Pro se litigants are held to the same standard as attorneys admitted to the practice of law with regard to adhering to procedural rules. See, e.g., Gentry v. State, 586 N.E.2d 860 (Ind. Ct. App. 1992) (holding that pro se litigant would be "held to the same standard regarding rule compliance as are attorneys duly admitted to the practice of law. He must comply with the appellate rules of procedure to have his appeal determined on the merits). Wetzel's failure to follow the rules of appellate procedure has impeded our review of his claim.

First, in his Notice of Appeal, Wetzel failed to request a transcript of the small claims court proceedings. Ind. App. Rule 9(F)(4) governs what is required in a Notice of Appeal and provides in relevant part:

> The Notice of Appeal shall designate all portions of the Transcript necessary to present fairly and decide the issues on appeal. If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.

"[Wetzel] bear[s] the burden of presenting a record that is complete with respect to the issues raised on appeal." Ford v. State, 704 N.E.2d 457, 461 (Ind. 1998) (citing Clark v. State, 562 N.E.2d 11 (Ind. 1990), cert. denied; Rondon v. State, 493 U.S. 969 (1987)), reh'g denied. "This burden is sustained by submitting a transcript of the trial proceedings or, where no transcript is available, an affidavit setting forward the content of the proceedings." Id.; see Ind. App. Rule 31(A). Because Wetzel provided no transcript or affidavit of the evidence, he has failed to sustain this burden.

Second, Wetzel's brief was distractingly violative of Ind. App. Rule 46.[2] This court has previously held that:

> While we prefer to decide cases on their merits, we will deem alleged errors waived where an appellant's noncompliance with the rules of appellate procedure is so substantial [that] it impedes our appellate consideration of the errors. The purpose of the appellate rules, especially Ind. Appellate Rule 46, is to aid and expedite review, as well as to relieve the appellate court of the burden of searching the record and briefing the case. Ind. Appellate Rule 46(A)(8)(a) states that the argument section of an appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . .." It is well settled that we will not consider an appellant's assertion on appeal when he has failed to present cogent argument supported by authority and references to the record as required by the rules. If we were to address such arguments, we would be forced to abdicate our role as an impartial tribunal and would instead become an advocate for one of the parties. This, clearly, we cannot do.

Shepherd v. Truex, 819 N.E.2d 458, 463 (Ind. Ct. App. 2004) (internal citations omitted).

---

[2] Wetzel's brief contains numerous defects, such as:

a) Wetzel's brief has failed to provide a statement of the issue presented for review, in violation of Ind. Appellate Rule 46(A)(4);
b) Wetzel's brief fails to provide a statement of the case, including the nature of the case, the course of the proceedings, its disposition in the court below, in violation of Ind. Appellate Rule 46(A)(5);
c) Wetzel's brief does not contain an understandable statement of the facts relevant to the issue presented for review with appropriate reference to the transcript, in violation of Ind. Appellate Rule 46(A)(6);
d) Wetzel's brief violates Ind. Appellate Rule 46(A)(8) in that he has failed to set forth specifically each error assigned in the small claims court and in the argument applicable thereto, has failed to include his contentions with respect to the issues presented, reasons in support thereof, citations to authorities, statutes and parts of the record relied upon, and a clear showing of how the issues and contentions in support thereof relate to the particular facts of the case under review; and
e) Wetzel did not provide the standard of review.

A review of the court docket in this case reveals that, in addition to the substantial errors in his brief, Wetzel, throughout the appellate process, has failed to adhere to the rules. We note that there have been instances of unsigned filings, multiple requests for belated filings, and noncompliant filings.

"In deciding whether or not [Wetzel] has complied, or at least substantially complied, with the requirements of the rules for the preparation of an appellate brief, our standard is whether the non-compliance is sufficiently substantial to impede consideration of the issues raised." Terpstra v. Farmers and Merchants Bank, 483 N.E.2d 749, 754 (Ind. Ct. App. 1985), reh'g denied, trans. denied. The fact that Wetzel acted pro se in this matter does not excuse him from complying with appellate rules. Id. We "have the option of ordering [Wetzel] to file a new brief which does comply with [Ind. Appellate Rule 46], but we will not exercise that option here." Id. Rather, we will attempt to address Wetzel's arguments on the merits.

I.

The first issue is whether the small claims court erred by entering judgment for Auto Auction. Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). Our standard of review is particularly deferential in small claims actions, where "the trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law." Ind. Small Claims Rule 8(A); Mayflower Transit, Inc. v. Davenport, 714 N.E.2d 794, 797 (Ind. Ct. App. 1999). Nevertheless, the parties in a small claims court bear the same burdens of proof as they would in a regular civil action on the same issues. Ind. Small Claims Rule 4(A); Mayflower Transit, 714 N.E.2d at 797. While the method of proof may be informal, the relaxation of evidentiary rules is not the equivalent of relaxation of the burden of proof. Mayflower Transit, 714 N.E.2d at 797. It is incumbent upon the party who bears the burden of proof to

demonstrate that it is entitled to the recovery sought. Id. Wetzel appeals from a general judgment, which may be affirmed upon any legal theory supported by the evidence. Id.

Wetzel appears to argue that Auto Auction was negligent in moving his vehicle, and, as a result, his vehicle was damaged.[3] In order to prevail on a claim of negligence, Wetzel had to prove: (1) a duty owed to the Wetzel by Auto Auction; (2) a breach of that duty; and (3) injury to Wetzel proximately caused by that breach." Kantz v. Elkhart County Hwy. Dept., 701 N.E.2d 608, 610 (Ind. Ct. App. 1998) (citing Wickey v. Sparks, 642 N.E.2d 262, 265 (Ind. Ct. App. 1994)), trans. denied. "Negligence will not be inferred; rather, all of the elements of a negligence action must be supported by specific facts designated to the trial court or reasonable inferences that might be drawn from those facts." Kincade v. MAC Corp., 773 N.E.2d 909, 911 (Ind. Ct. App. 2002) (citing Hayden v. Paragon Steakhouse, 731 N.E.2d 456, 458 (Ind. Ct. App. 2000)). "An inference is not reasonable when it rests on no more than speculation or conjecture." Id.

Here, Wetzel has not met his burden of proof because he has not proven any of the elements of a negligence claim. Wetzel failed to provide this court with any of the evidence from the hearing in small claims court. He did not provide a transcript of the proceedings or an affidavit of the evidence. Moreover, the documents that Wetzel provided in his appendix included documents that were clearly produced after the date of the small claims court's order. Wetzel is asking this court to reweigh the evidence, and

[3] In support of his argument, Wetzel cites only the Federal Consumer Protection Act of 1997, and directs this court to a website, http://www.csrl.org/modellaws/protection.html, as the source of his information. Appellant's Appendix at 1. However, the website the Wetzel refers to in his table of authorities contains model legislation created by the Center for Study of Responsive Law and was never introduced to Congress. See, http://www.csrl.org/modellaws/index.html.

that we cannot do. Therefore, we find that Wetzel has failed to establish that the small claims court erred by entering judgment for Auto Auction. See, e.g., Miller v. Monsanto Co., 626 N.E.2d 538, 541 (Ind. Ct. App. 1993) (holding that "[a]ll of the elements of a negligence action must be supported by specific facts designated to the trial court or reasonable inferences that might be drawn from those facts").

II.

The next issue is whether the small claims court showed bias when it entered judgment for Auto Auction. "The law presumes that a judge is unbiased and unpredjudiced." Timberlake v. State, 753 N.E.2d 591, 610 (Ind. 2001), reh'g denied, cert. denied, 537 U.S. 839, 123 S.Ct. 162 (2001). "Personal bias stems from an extrajudicial source meaning a source separate from the evidence and argument presented at the proceedings." Bahm v. State, 789 N.E.2d 50, 54 (Ind. Ct. App. 2003), clarified on reh'g by 794 N.E.2d 444 (Ind. Ct. App. 2003) (affirming prior decision and clarifying impact of that decision on Bahm's possible issues and arguments on rehearing), trans. denied. "Adverse rulings on judicial matters do not indicate a personal bias or prejudice, nor typically do statements at sentencing hearings." Id. at 55. Furthermore, "merely asserting bias and prejudice does not make it so." Massey v. State, 803 N.E.2d 1133, 1138-1139 (Ind. Ct. App. 2004). In order to rebut the presumption of nonbias or prejudice, Wetzel must establish "from the judge's conduct actual bias or prejudice that' he was placed in jeopardy." Id. "Such bias and prejudice exists only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding." Id.

Here, Wetzel argues that the small claims court's decision should be reversed because of a possible relationship between Judge Hamilton and Auto Auction or its owner. Specifically, Wetzel states: "A judge or magistrates [sic] job also consists of generating monies for the court whenever possible[,] while remaining partial [sic]. [Judge] Alan Hamilton could be a dealer and attend the sales or [he and Wolfe] might be partners possibly friends." Appellant's Brief at 2. Wetzel points to no evidence in the record supporting these baseless claims. Therefore, we cannot find that the small claims court exhibited bias or prejudice when it entered judgment for Auto Auction. See, e.g., Allen v. State, 737 N.E.2d 741 (Ind. 2000) (holding that facts of the case did not support a rational inference of bias or prejudice).

For the foregoing reasons, we affirm the small claims court's judgment in favor of Auto Auction.[4]

Affirmed.

SULLIVAN, J. and CRONE, J. concur

[4] Wetzel argues that "the magistrate should have respected the CONSUMER PROTECTION ACT of 1997 more than he did." Appellant's Brief at 2. Aside from the fact that the legislation to which Wetzel was never introduced to Congress, Wetzel presents no argument with regard to the relevancy of the alleged Act in the present action. Furthermore, there is no evidence that this argument was raised in the small claims court. Consequently, he has waived this argument on appeal. See, e.g., Thacker v. Wentzel, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (holding that "we will not consider an appellant's assertion on appeal when he has not presented cogent argument supported by authority and references to the record as required by the rules").